Employment Law Update – March 2019: USDOL Issues the Long-Awaited Proposed Overtime Rule

On March 7, 2019, the U.S. Department of Labor ("DOL") proposed an update to the weekly salary amount necessary to support most of the federal white collar overtime exemptions for executive, administrative, and professional employees. Some states, like New Jersey, follow the federal salary level amount whereas others, like New York, have a higher salary level. The DOL has *not* proposed any changes to the duties tests applicable to any of the white collar overtime exemptions. The main proposed changes, which would take effect in early 2020, are:

- The minimum weekly salary amount would be increased to $679/week ($35,308 annually) from the current level of $455/week ($23,660 annually). Any states that require a higher salary amount would not be impacted by this rule and an employer in those states would need to follow the state rule.
- Employers would also be permitted to include some non-discretionary bonuses and incentive pay (including commissions), paid at least annually, to account for up to 10% of the required salary level.
- Employers would also be permitted under the rule to make a "catch-up" payment within one pay period after the end of the year to bring the employee's pay to the required salary level, provided that the employee has been paid at least 90% of the required salary level during the year. For example, if the employer paid the employee $611.10 per week during the year, and at the end of the year the employee's non-discretionary bonuses and incentive pay during the year did not equal the annual salary level ($35,308), the employer would be permitted to make up the shortage. That catch-up payment, however, would *not* count toward the next year's salary amount for overtime exemption purposes.
- In addition, the highly compensated employee salary level, currently set at $100,000, would be updated to $147,414. The employer's burden on the duties test of highly compensated employees is significantly less than for other employees. Employers may only use this test for office or non-manual work.
- The proposed rule would not automatically adjust the level salary annually but, rather, would update the salary levels every four years but only after an opportunity for public comment.

To read the full notice of proposed rulemaking from the DOL, click here.

If you have any questions regarding the new law, please contact:

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